

3/19/09

**COMMISSIONERS**  
 KRISTIN K. MAYES, Chairman  
 GARY PIERCE  
 PAUL NEWMAN  
 SANDRA D. KENNEDY  
 BOB STUMP

MICHAEL P. KEARNS  
 INTERIM EXECUTIVE DIRECTOR



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## ARIZONA CORPORATION COMMISSION

ORIGINAL

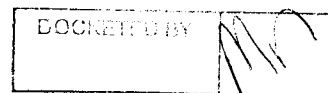
## MEMORANDUM


**TO:** Kristin K. Mayes, Chairman  
 Gary Pierce  
 Paul Newman  
 Sandra D. Kennedy  
 Bob Stump

Arizona Corporation Commission

DOCKETED

MAR - 5 2009



**FROM:** Matthew J. Neubert   
 Director of Securities

**DATE:** March 2, 2009

**RE:** Charles B. Ferguson, *et al.* (Docket No. S-20610A-08-0438); Order to Cease and Desist, for Restitution, and for Administrative Penalties

**CC:** Michael P. Kearns, Interim Executive Director

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 AZ CORP COMMISSION  
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Attached is a proposed Order to Cease and Desist, for Restitution, and for Administrative Penalties (the "Order") and Consent to Same by: Charles B. Ferguson ("FERGUSON") and Southern Homes, LLC ("SOUTHERN"). The Order finds that FERGUSON and SOUTHERN violated A.R.S. §§ 44-1841, 44-1842, and 44-1991 by offering and selling unregistered securities while being unregistered and by violating the antifraud provisions of the Securities Act. The Order requires FERGUSON and SOUTHERN to cease and desist their activity, pay \$1,177,500 in restitution, and pay an administrative penalty in the amount of \$150,000.

From December 2005 to June 2008, FERGUSON and SOUTHERN offered and sold investment contracts and limited liability company membership interests to at least 38 investors. Referring to most of the investments as a "bank trading platform," FERGUSON and SOUTHERN gave investors little or no documentation and represented rates of return ranging from 250% to 1000%. FERGUSON spent much of the investors' money on personal expenses such as child support, Arizona Cardinals box seats, jewelry including a 5+ carat diamond ring, and a BMW. Also, investor money was used to repay other investors.

FERGUSON has been indicted on 60 criminal counts including theft, money laundering, forgery, fraud schemes, and identity theft. He is in custody awaiting trial and most of the luxury items that FERGUSON purchased with investor money have been seized.

The Division believes that the Order is appropriate to protect the public welfare.

Originator: Aaron S. Ludwig

1                                   **BEFORE THE ARIZONA CORPORATION COMMISSION**

2                                   **COMMISSIONERS**

3                                   KRISTIN K. MAYES, Chairman  
4                                   GARY PIERCE  
5                                   PAUL NEWMAN  
6                                   SANDRA D. KENNEDY  
                                    BOB STUMP

7                                   In the matter of

8                                   SOUTHERN HOMES, L.L.C., an Arizona  
9                                   limited liability company;

10                                  CHARLES BRUCE FERGUSON and  
                                    JANE DOE FERGUSON, husband and  
11                                  wife,

12                                  Respondents.

)                                  **DOCKET NO. S-20610A-08-0438**

)                                  **DECISION NO. \_\_\_\_\_**

)                                  **ORDER TO CEASE AND DESIST, FOR**  
)                                  **RESTITUTION, AND FOR**  
)                                  **ADMINISTRATIVE PENALTIES AND**  
)                                  **CONSENT TO SAME BY RESPONDENTS:**

)                                  **SOUTHERN HOMES, L.L.C.**

)                                  **and**

)                                  **CHARLES BRUCE FERGUSON**

16                                  Respondents SOUTHERN HOMES, L.L.C. and CHARLES BRUCE FERGUSON  
17                                  ("Respondents") elect to permanently waive any right to a hearing and appeal under Articles 11  
18                                  and 12 of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act") with respect to  
19                                  this Order to Cease and Desist, for Restitution, and for Administrative Penalties ("Order").  
20                                  Respondents admit the jurisdiction of the Arizona Corporation Commission ("Commission");  
21                                  neither admit nor deny the Findings of Fact and Conclusions of Law contained in this Order; and,  
22                                  consent to the entry of this Order by the Commission.

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## I.

## FINDINGS OF FACT

1. SOUTHERN HOMES, L.L.C. is a manager-managed, Arizona limited liability company with a last known principal place of business in Maricopa County, Arizona.

2. CHARLES BRUCE FERGUSON ("FERGUSON"), a single man, is an individual last known to reside in Maricopa County, Arizona. FERGUSON is a member and the sole manager of SOUTHERN HOMES.

3. SOUTHERN HOMES and FERGUSON may be referred to collectively as "Respondents."

4. From on or about December 2005 to June 2008 within or from Arizona, Respondents offered and sold \$1,177,500 of unregistered securities in the form of investment contracts and limited liability company membership interests while not registered with the Commission as securities dealers or salesmen.

5. Between December 2005 and February 2006, Respondents offered and sold \$165,000 of limited liability company membership interests in SOUTHERN HOMES to seven Arizona investors (collectively "the Condo Investors"). In exchange for the payment of \$50,000 to SOUTHERN HOMES by one of the Condo Investors, Respondents gave him a certificate of ownership of five units of SOUTHERN HOMES.

6. Respondents represented that the Condo Investors' money would be used by Respondents to purchase an apartment building that would be converted by Respondents into condominiums to be sold by Respondents for profit that would be distributed to the Condo Investors. Other than paying Respondents, the Condo Investors had no duties to perform or responsibilities to fulfill in order to receive their promised profit. In fact, pursuant to the operating agreement of SOUTHERN HOMES, they were specifically not allowed to act on behalf of or manage in any way SOUTHERN HOMES.

1           7.       Respondents opened escrow to purchase the apartment building without sufficient  
2 capital to finance the purchase, extended escrow several times, paid additional earnest money each  
3 time, and eventually forfeited the \$100,000 earnest money on deposit with the title company.

4           8.       Respondents failed to notify the Condo Investors that the escrow was cancelled and  
5 did not return their remaining investment funds.

6           9.       Even though the Condo Investors were told that their money would be spent only  
7 on the apartment-to-condo conversion project, FERGUSON spent some of their money on  
8 personal expenses.

9           10.      Respondents have not provided certain Condo Investors with either their principal  
10 investment or any of the promised profit.

11          11.      Between at least August 2006 and February 2008, Respondents offered and sold  
12 \$397,500 of investment contracts to at least 14 investors (collectively "the Program Investors").  
13 The investment contracts with SOUTHERN HOMES had various titles, including Professional  
14 Services Agreement, Joint Venture Agreement, etc. and they purportedly involved various  
15 "programs" with names like "humanitarian program," "5K/10K program," and "invest 10K and get  
16 30K back in 60 days program."

17          12.      Respondents represented rates of return on these investments ranging from 250% to  
18 1000%.

19          13.      FERGUSON deposited at least \$147,500 of the Program Investors' money into his  
20 personal bank account and spent some of it on personal expenses such as child support, Arizona  
21 Cardinals box seats, and jewelry including a 5+ carat diamond ring.

22          14.      Respondents have not provided certain Program Investors with either their principal  
23 investment or any of the promised returns.

24          15.      Between February 2008 and June 2008, Respondents sold \$615,000 of investment  
25 contracts to at least three investors (collectively "the Bank Investors"). FERGUSON represented  
26

1 to one of the Bank Investors that his money would be pooled together with that of other investors  
2 to make up a \$300,000 fee required by a foreign bank to obtain a \$10 million line of credit.

3 16. FERGUSON represented to the Bank Investors that their money would be invested  
4 in a "bank trading platform" and that they would receive a return on their investment payable in 14  
5 to 30 days.

6 17. Respondents provided no documentation whatsoever to one of the Bank Investors  
7 regarding his investment. Respondents provided at least one of the Bank Investors with a  
8 document entitled "Irrevocable Consultant Agreement and Payorder" signed by FERGUSON on  
9 behalf of SOUTHERN HOMES.

10 18. Respondents failed to provide the Bank Investors with disclosures about their  
11 investment including, but not limited to, how the investment would generate the promised return,  
12 and whether there were any risks associated with the investment.

13 19. FERGUSON deposited the Bank Investors' money into his personal bank account  
14 and spent some of it on personal expenses such as child support and the purchase of a BMW.

15 20. Over \$287,000 of the Bank Investors' money was used to repay Program Investors.

16 21. Respondents have not provided the Bank Investors with either their principal  
17 investment or any of the promised returns.

## 18 II.

### 19 CONCLUSIONS OF LAW

20 1. The Commission has jurisdiction over this matter pursuant to Article XV of the  
21 Arizona Constitution and the Securities Act.

22 2. Respondents offered or sold securities within or from Arizona, within the meaning  
23 of A.R.S. §§ 44-1801(15), 44-1801(21), and 44-1801(26).

24 3. Respondents violated A.R.S. § 44-1841 by offering or selling securities that were  
25 neither registered nor exempt from registration.

26

1           4.       Respondents violated A.R.S. § 44-1842 by offering or selling securities while  
2 neither registered as dealers or salesmen nor exempt from registration.

3           5.       Respondents violated A.R.S. § 44-1991 by (a) employing a device, scheme, or  
4 artifice to defraud, (b) making untrue statements or misleading omissions of material facts, and (c)  
5 engaging in transactions, practices, or courses of business that operate or would operate as a fraud  
6 or deceit. Respondents' conduct includes, but is not limited to, the following:

7                   a)       Failing to disclose to the Condo Investors that FERGUSON would use  
8 some of their money to pay his personal expenses;

9                   b)       Failing to disclose to the Program Investors that some of their money  
10 would be deposited into FERGUSON'S personal bank account and used to pay personal  
11 expenses such as child support, Arizona Cardinals box seats, and jewelry including a 5+ carat  
12 diamond ring;

13                  c)       Failing to disclose to the Bank Investors that at least \$600,000 of their  
14 money would be deposited into FERGUSON'S personal bank account and used to pay personal  
15 expenses such as child support and the purchase of a BMW; and,

16                  d)       Failing to disclose to the Bank Investors that their money would be used to  
17 repay Program Investors.

18           6.       Respondents' conduct is grounds for a cease and desist order pursuant to A.R.S.  
19 § 44-2032.

20           7.       Respondents' conduct is grounds for an order of restitution pursuant to A.R.S. § 44-  
21 2032.

22           8.       Respondents' conduct is grounds for administrative penalties under A.R.S. § 44-  
23 2036.

**III.****ORDER**

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2  
3 THEREFORE, on the basis of the Findings of Fact, Conclusions of Law, and Respondents'  
4 consent to the entry of this Order, attached and incorporated by reference, the Commission finds  
5 that the following relief is appropriate, in the public interest, and necessary for the protection of  
6 investors:

7 IT IS ORDERED, pursuant to A.R.S. § 44-2032, that Respondents, and any of  
8 Respondents' agents, employees, successors and assigns, permanently cease and desist from  
9 violating the Securities Act.

10 IT IS FURTHER ORDERED that Respondents comply with the attached Consent to Entry  
11 of Order.

12 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2032, that Respondents shall pay  
13 restitution to the Commission in the amount of \$1,177,500. Payment shall be made in full on the  
14 date of this Order. Any amount outstanding shall accrue interest at the rate of 10% per annum  
15 from the date of this Order until paid in full. Payment shall be made to the "State of Arizona" to  
16 be placed in an interest-bearing account controlled by the Commission. The Commission shall  
17 disburse the funds on a pro-rata basis to investors shown on the records of the Commission. Any  
18 restitution funds that the Commission cannot disburse because an investor refuses to accept such  
19 payment shall be disbursed on a pro-rata basis to the remaining investors shown on the records of  
20 the Commission. Any funds that the Commission determines it is unable to or cannot feasibly  
21 disburse shall be transferred to the general fund of the state of Arizona.

22 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036, that Respondents shall pay an  
23 administrative penalty in the amount of \$150,000. Payment shall be made in full on the date of  
24 this Order. Any amount outstanding shall accrue interest at the rate of 10% per annum from the  
25 date of this Order until paid in full. Payment shall be made to the "State of Arizona." The  
26 payment obligations for these administrative penalties shall be subordinate to any restitution

1 obligations ordered herein and shall become immediately due and payable only after restitution  
2 payments have been paid in full or upon Respondents' default with respect to Respondents'  
3 restitution obligations.

4 For purposes of this Order, a bankruptcy filing by any of the Respondents shall be an act of  
5 default. If any Respondent does not comply with this Order, any outstanding balance may be  
6 deemed in default and shall be immediately due and payable.

7 IT IS FURTHER ORDERED, that if any Respondent fails to comply with this order, the  
8 Commission may bring further legal proceedings against that Respondent, including application to  
9 the superior court for an order of contempt.

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IT IS FURTHER ORDERED that this Order shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, MICHAEL P. KEARNS,  
Interim Executive Director of the Arizona Corporation  
Commission, have hereunto set my hand and caused the  
official seal of the Commission to be affixed at the  
Capitol, in the City of Phoenix, this \_\_\_\_\_ day of  
\_\_\_\_\_, 2009.

\_\_\_\_\_  
MICHAEL P. KEARNS  
INTERIM EXECUTIVE DIRECTOR

\_\_\_\_\_  
DISSENT

\_\_\_\_\_  
DISSENT

This document is available in alternative formats by contacting Shaylin A. Bernal, ADA  
Coordinator, voice phone number 602-542-3931, e-mail [sbernal@azcc.gov](mailto:sbernal@azcc.gov).

(ASL)

**CONSENT TO ENTRY OF ORDER**

1  
2           1.       Respondents SOUTHERN HOMES, L.L.C. and CHARLES BRUCE FERGUSON  
3 (“Respondents”) admit the jurisdiction of the Commission over the subject matter of this  
4 proceeding. Respondents acknowledge that they have been fully advised of their right to a hearing  
5 to present evidence and call witnesses and Respondents knowingly and voluntarily waive any and  
6 all rights to a hearing before the Commission and all other rights otherwise available under Article  
7 11 of the Securities Act and Title 14 of the Arizona Administrative Code. Respondents  
8 acknowledge that this Order to Cease and Desist, for Restitution, and for Administrative Penalties  
9 (“Order”) constitutes a valid final order of the Commission.

10           2.       Respondents knowingly and voluntarily waive any right under Article 12 of the  
11 Securities Act to judicial review by any court by way of suit, appeal, or extraordinary relief  
12 resulting from the entry of this Order.

13           3.       Respondents acknowledge and agree that this Order is entered into freely and  
14 voluntarily and that no promise was made or coercion used to induce such entry.

15           4.       Respondents acknowledge that they have been represented by an attorney in this  
16 matter, they have reviewed this Order with their attorney, Richard L. Klauer, and understand all  
17 terms it contains.

18           5.       Respondents neither admit nor deny the Findings of Fact and Conclusions of Law  
19 contained in this Order. Respondents agree that they shall not contest the validity of the Findings  
20 of Fact and Conclusions of Law contained in this Order in any present or future administrative  
21 proceeding before the Commission or any other state agency concerning the denial or issuance of  
22 any license or registration required by the state to engage in the practice of any business or  
23 profession.

24           6.       By consenting to the entry of this Order, Respondents agree not to take any action  
25 or to make, or permit to be made, any public statement denying, directly or indirectly, any Finding  
26 of Fact or Conclusion of Law in this Order or creating the impression that this Order is without

1 factual basis. Respondents will undertake steps necessary to assure that all of their agents and  
2 employees understand and comply with this agreement.

3 7. While this Order settles this administrative matter between Respondents and the  
4 Commission, Respondents understand that this Order does not preclude the Commission from  
5 instituting other administrative or civil proceedings based on violations that are not addressed by  
6 this Order.

7 8. Respondents understand that this Order does not preclude the Commission from  
8 referring this matter to any governmental agency for administrative, civil, or criminal proceedings  
9 that may be related to the matters addressed by this Order.

10 9. Respondents understand that this Order does not preclude any other agency or  
11 officer of the state of Arizona or its subdivisions from instituting administrative, civil, or criminal  
12 proceedings that may be related to matters addressed by this Order.

13 10. Respondents agree that they will not apply to the state of Arizona for registration as  
14 a securities dealer or salesman or for licensure as an investment adviser or investment adviser  
15 representative at any time in the future.

16 11. Respondents agree that they will not exercise any control over any entity that offers  
17 or sells securities or provides investment advisory services within or from Arizona at any time in  
18 the future.

19 12. Respondents agree that they will not sell any securities in or from Arizona without  
20 being properly registered in Arizona as a dealer or salesman, or exempt from such registration;  
21 Respondents will not sell any securities in or from Arizona unless the securities are registered in  
22 Arizona or exempt from registration; and, Respondents will not transact business in Arizona as an  
23 investment adviser or an investment adviser representative unless properly licensed in Arizona or  
24 exempt from licensure.

25 13. Respondents agree that they will continue to cooperate with the Securities Division  
26 by, including but not limited to, providing complete and accurate testimony at any hearing in this

1 matter and cooperating with the state of Arizona in any related investigation or any other matters  
2 arising from the activities described in this Order.

3 14. Respondents consent to the entry of this Order and agree to be fully bound by its  
4 terms and conditions.

5 15. Respondents acknowledge and understand that, if they fail to comply with the  
6 provisions of the order and this consent, the Commission may bring further legal proceedings  
7 against them, including application to the superior court for an order of contempt.

8 16. Respondents understand that default shall render them liable to the Commission for  
9 its costs of collection and interest at the maximum legal rate.

10 17. Respondents agree and understand that, if they fail to make any payment as  
11 required in the Order, any outstanding balance shall be in default and shall be immediately due and  
12 payable without notice or demand. Respondents agree and understand that acceptance of any  
13 partial or late payment by the Commission is not a waiver of default by Commission.

14 ...

15 ...

16 ...

18. CHARLES BRUCE FERGUSON represents that he is a member and the sole manager of SOUTHERN HOMES, L.L.C. and has been authorized by name of SOUTHERN HOMES, L.L.C. to enter into this Order for and on behalf of it.

*Charles Bruce Ferguson*  
CHARLES BRUCE FERGUSON

STATE OF ARIZONA )  
County of *MARICOPA* ) ss

SUBSCRIBED AND SWORN TO BEFORE me this 1 day of FEB., 2009.



*Richard L. Klauer*  
NOTARY PUBLIC

My commission expires:

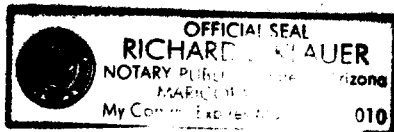
*Charles Bruce Ferguson*  
SOUTHERN HOMES, L.L.C.

By: Charles Bruce Ferguson

Its: Manager

STATE OF ARIZONA )  
County of *MARICOPA* ) ss

SUBSCRIBED AND SWORN TO BEFORE me this 1 day of FEB, 2009.



*Richard L. Klauer*  
NOTARY PUBLIC

My commission expires: